

EXHIBIT 13

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(SANTA ROSA DIVISION)

In re:

THE LEGACY ESTATE GROUP, LLC,

Case No. 05-14659

Chapter 11

Santa Rosa ,California
September 27, 2007
10:06 a.m.

Debtor.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE LEGACY ESTATE
GROUP, LLC,

Plaintiff,

v.

A.P. No. 06-1173

JOHN M. BRYAN, JOHN M. AND
FLORENCE E. BRYAN TRUST,
J.M. BRYAN FAMILY TRUST,
KULWINDER SIDHU, DEVINDER
SIDHU, PACIFIC PARAGON
INVESTMENT FUND, LTD., a British
Columbia company, HARRY CHEW,
and AIC CAPITAL PARTNERS, LLC,
a California limited liability
company,

Defendants.

TRANSCRIPT OF PROCEEDINGS
MOTION TO CERTIFY CASE TO DISTRICT COURT
FOR JURY TRIAL

BEFORE THE HONORABLE ALAN JAROSLOVSKY
UNITED STATES BANKRUPTCY JUDGE

1 APPEARANCES:

2

3 For the Unsecured MacCONAGHY and BARNIER
4 Creditors' Committee: BY: JOHN H. MacCONAGHY, ESQ.
-and-
JEAN BARNIER, ESQ.
5 645 First Street West #D
6 Sonoma, California 95476

7 For John Bryan: NIXON PEABODY, LLP
8 BY: GLENN E. WESTREICH, ESQ.
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9 San Francisco, California 94111

10

11 Court Recorder: KATIE ANDERSEN
12 UNITED STATES BANKRUPTCY COURT
99 South "E" Street
13 Santa Rosa, California 95404

14 Transcription Service: Jo McCall
15 Electronic Court
Recording/Transcribing
16 2868 E. Clifton Court
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1 P R O C E E D I N G S

2 October 1, 2007 10:06 a.m.

3 ---oOo---

4 THE CLERK: The court is now in session, The
5 Honorable Alan Jaroslovsky presiding.

6 THE COURT: Be seated, please.

7 THE CLERK: No. 2 on the 10:00 o'clock calendar,
8 The Official Committee of Unsecured Creditors versus Bryan.

9 MR. MacCONAGHY: Good morning, Your Honor, John
10 MacConaghy and Jean Barnier for the plaintiff, The Official
11 Unsecured Creditors' Committee of the estate of The Legacy
12 Estate Group, LLC.

13 MR. WESTREICH: Good morning, Your Honor, Glenn
14 Westreich, Nixon Peabody, for John Bryan and the Bryan
15 Trusts.

16 THE COURT: Well, as I understand it, there's
17 evidence that this trust is revocable?

18 MR. MacCONAGHY: That is correct, Your Honor, and
19 we're prepared to proceed accordingly.

20 MR. WESTREICH: Your Honor, we'll stipulate to --

21 THE CLERK: Counsel, you need to use one of the
22 microphones.

23 MR. WESTREICH: Your Honor, we will stipulate that
24 the John and Florence Bryan Trust, the trust at issue, is a
25 revocable trust.

1 THE COURT: So is there any reason why I should
2 not deny the request for a jury?

3 MR. WESTREICH: Yes, Your Honor. As we pointed
4 out in the brief that we filed this week, a revocable trust
5 is recognized in the State of California as a separate and
6 distinct legal entity. All parties are entitled under the
7 Seventh Amendment of the United States Constitution to a
8 right to a jury.

9 The Probate Code specifically provides that there
10 is no merger between the trust and settlor or trustee, so
11 there's no question that it's a separate entity. It
12 provides different rights and obligations and has its own
13 set of rights and duties. And just as in this case, the
14 trust was named by the plaintiff as a defendant, a separate
15 defendant, because all of the transactions in issue with
16 respect with the trust were entered into by the trust
17 itself, and as in this case, in fact, a number of causes of
18 action are stated solely against the trust --

19 THE COURT: Well, let me put it to you this way.
20 If I wanted to avoid litigation in bankruptcy, what would
21 keep me from creating a revocable trust just before
22 bankruptcy or maybe even just before the hearing in front
23 of the Bankruptcy Court?

24 MR. WESTREICH: Well, in this particular case, I
25 think that question doesn't really apply. This trust has

1 existed since --

2 THE COURT: So you're saying that anyone who's
3 clever can avoid having a bankruptcy issue litigated in the
4 Bankruptcy Court just by creating a revocable trust.

5 MR. WESTREICH: Well, I don't see how that would
6 avoid it, because if the trust is a party to transactions,
7 then the trust is going to -- and if the trust submits a
8 claim, the trust is going to be subject to Bankruptcy Court
9 jurisdiction just like if an individual is a party to a
10 transaction and submits a claim. You have two different
11 entities here. It's no different than forming a
12 partnership or a corporation.

13 THE COURT: Well --

14 MR. WESTREICH: But there's absolutely no evidence
15 here that this trust was formed to avoid Bankruptcy Court
16 jurisdiction.

17 THE COURT: But the point is, if you're right,
18 anybody could avoid --

19 MR. WESTREICH: I'm not sure why that would be
20 true. The trust, like any other entity, can submit a claim
21 in Bankruptcy Court. Had the trust here submitted a claim
22 in this court, we wouldn't be arguing about whether it was
23 subject to your jurisdiction.

24 THE COURT: Well, but there are three claims here,
25 right? And two of them have been filed.

1 MR. WESTREICH: True.

2 THE COURT: And including one by Mr. Bryan.

3 MR. WESTREICH: Correct.

4 THE COURT: And so this is the third one, so --

5 MR. WESTREICH: And it's separate and distinct
6 from the other claims.

7 THE COURT: Yeah, I know, but you're -- look, I
8 have to restrain myself. I understand Mr. St. James has
9 been the attorney who's been doing this all along, but to
10 me, this is just a big game that's being played, and I'm
11 getting tired of playing it. I think your client is just
12 trying to make this as expensive as possible for this
13 matter to be litigated. I think that your client is using
14 both proceedings in this court and the District Court to do
15 it. And this looks to me just like another game your
16 client is playing.

17 MR. WESTREICH: Well, Your Honor, I can assure you
18 that there's no gamesmanship involved. What's involved is
19 a party that has not submitted to the jurisdiction of this
20 court, enforcing the right that the United States
21 Constitution provides to it.

22 THE COURT: All right. Well, is there any reason
23 why I shouldn't take the matter under submission and decide
24 the legal issue?

25 MR. WESTREICH: I don't -- I actually agree that

1 it's purely a legal issue. I don't think the alter ego
2 theory that's been advanced by the plaintiff has any
3 bearing on a party's constitution rights, and there's
4 absolutely no law that says that there's any relationship.

5 THE COURT: Well, maybe I'm going to make some.

6 MR. WESTREICH: Well, I would just ask Your Honor
7 to carefully review the authorities. This is a
8 constitutional issue, and I think before anyone is deprived
9 of constitutional rights, there ought to be clear law and
10 there's simply no law that provides for this.

11 THE COURT: I'll do my best to make some clear
12 law.

13 MR. WESTREICH: All right. Well, thank you, Your
14 Honor.

15 MR. MacCONAGHY: Your Honor, with illusions to
16 constitutional issues, I'm hearing illusions to further
17 appeals.

18 THE COURT: Well, appeal is the proper way to get
19 this resolved. What's improper is to try to -- is to try
20 to use the tail to wag the dog and get the rest of these
21 matters away from me when this is clearly a dispute between
22 a bankruptcy estate and creditors who filed claims, and
23 it's supposed to be adjudicated here for reasons of economy
24 and for reasons of waiver of the right to a jury. So
25 Bankruptcy Courts have been hearing matters like this for a

1 hundred years, and the conduct of the claimants in this
2 case, to my mind, is very close to reprehensible.

3 MR. MacCONAGHY: My point, Your Honor, is that if
4 there is going to be further litigation in a higher court
5 about this, we would like to make a complete factual record
6 because there's a very definite factual dispute here.
7 Counsel says that the John and Florence Bryan Trust is a
8 revocable trust and thus a distinct legal entity and thus
9 has never filed a Proof of Claim in this case, and we take
10 great issue with that statement.

11 We are prepared -- and I an make an offer of
12 proof to -- and we would like to call Mr. Bryan as an
13 adverse witness to demonstrate that in fact John Bryan, to
14 be precise, and his wife Florence own absolutely nothing.
15 Mr. Bryan has testified in deposition that every single
16 asset he owns is in fact an asset of the John and Florence
17 Bryan Trust, the claimant at issue by this motion, with the
18 exception of things that he owns in the John M. Bryan
19 Family Trust. So we would be able to present a record
20 today, Your Honor, that the claims are actually receivables
21 owned by the John and Florence Bryan Trust, not Mr. Bryan,
22 that the underlying economic interests that are being
23 protected by these claims are not the interests of, quote,
24 "John Bryan" per se but actually the John and Florence
25 Bryan Revocable Trust, to be precise, exactly the same as

1 when Your Honor heard a status conference on Monday in the
2 case of Locke versus Ingram Entertainment. You weren't
3 adjudicating a claim for Mr. Locke even though the action
4 was properly so captioned. You were adjudicating a claim
5 for an estate, and these claims, I think we can demonstrate
6 as a factual matter, were in fact filed by Mr. Bryan in his
7 representative capacity as trustee for the John and
8 Florence Bryan Revocable Trust. So we're prepared to
9 present that factual record.

10 THE COURT: All right. So you're saying the facts
11 are even stronger. I have serious doubts about whether or
12 not a revocable trust is not bound by the Proof of Claim
13 filed by the person with the power to revoke the trust,
14 period. But you're saying there's additional facts, and
15 I'll be happy to hear them if there's not a stipulation.

16 MR. WESTREICH: Well, Your Honor, everything that
17 counsel is referring to is in the record already. It was
18 all submitted in connection with Mr. Bryan's deposition,
19 and I think there's no reason to call him onto the stand to
20 put on duplicative testimony. He admitted as much in his
21 ex parte motion that all the facts that he's relying on are
22 already in the deposition.

23 THE COURT: Well, Mr. MacConaghy has just made an
24 offer of proof. Do you accept it or not?

25 MR. WESTREICH: I accept the fact that -- I don't

1 accept his characterization of the fact that -- or the
2 claim, that in making personal claims, that is, John Bryan
3 making a claim against the bankruptcy, he was acting on
4 behalf of the trust, but the facts which are the only
5 things that Mr. Bryan can attest to are already -- the
6 facts that he has substantially all of his assets in the
7 trust or in the Family Trust are something that we would
8 stipulate to and that Mr. Bryan already testified to and
9 that are already before this Court in the record.

10 THE COURT: Well, Mr. MacConaghy, I'm not sure if
11 that meets your offer of proof or not. Are you satisfied
12 with that or do you want a further admission or do you want
13 to call a witness? I mean factually the only thing you
14 added to it that I could hear was that all of the assets
15 are in the trust. That is an additional factor. Are there
16 additional factors that you feel are important and then
17 have they or have they not been admitted to?

18 MR. MacCONAGHY: You know, Your Honor, I think
19 they have admitted as a general matter, and I am -- I don't
20 need to call Mr. Bryan as a witness as a consequence, but I
21 would like to focus on some things for argument purpose,
22 just again, to get it on the record. And specifically, I
23 would like to get on the record the exact deposition
24 testimony in question, and I have placed in front of Your
25 Honor and counsel two black binders, one that has the

1 deposition of Mr. Bryan and the second is a, quote,
2 "Exhibit Book." The Exhibit Book has eight tabs. Seven of
3 those tabs are actually pleadings in the cases, the Proofs
4 of Claim and the claims docket sheet. And the eighth tab
5 is the John and Florence Bryan Trust Agreement that I would
6 like to move into evidence.

7 As far as the deposition testimony in question,
8 the specific testimony that we are relying on, the most
9 important testimony is at page 30 and 31, and there's just
10 a few lines I would like to get into the record. Starting
11 at page 8, my colleague said:

12 "Question: Let's now turn to the John and
13 Florence Bryan Trust.

14 "Answer: That's a present interest trust."

15 And then there's a brief colloquy:

16 "Question: When you say it's a present interest
17 trust, what do you mean by that, Mr. Bryan?

18 "Answer: It's a trust established by Flo and
19 myself which essentially owns all of our assets."

20 Then on page 31, line 11:

21 "Question: What assets are in that trust?

22 "Answer: Most of our personal holdings, our
23 stocks, our real estate.

24 "Question: Are there any personal holdings of
25 yours and your wife that are not in the John and

1 Florence Bryan Trust?

2 "Answer: Not that I'm aware.

3 "Question: So basically everything that you and
4 your wife own is property of the John and
5 Florence Bryan Trust?

6 "Answer: Correct."

7 Now, if you look at the trust agreement, Your Honor, on
8 page 1, it identifies Mr. Bryan as the -- Mr. and Mrs.
9 Bryan as the settlors. He's the trustee. There's a co-
10 trustee who is an accountant under his employ,
11 approximately half time. The trust agreement on Article II
12 says that they can revoke it, amend it, withdraw property
13 at any time. And in Article III it says that while they're
14 alive, they get all the income and they can consume any
15 portion of the principal they deem fit.

16 Mr. Bryan testified that -- and that this was
17 essentially a substitute for a Will, that's perfectly
18 legitimate in that regard, and we don't dispute that. It's
19 an estate planning device commonly used by millions of
20 people.

21 Turning to the Proof of Claim that he filed in
22 this case, or one of the Proofs of Claim, which is Exhibit
23 5 in the book, it's a 1.5 million dollar claim -- excuse me
24 1.3 million dollar claim filed by John M. Bryan and it's
25 essentially a subrogation claim. The attachment to the

1 claim says, quote:

2 "John M. Bryan honored the Bryan guaranty by
3 paying Red Barn Ranch 1.3 million dollars."

4 Well, if we combine that with the prior
5 testimony, John M. Bryan really didn't pay the 1.3 million
6 dollars because John M. Bryan has no money. The money was
7 really paid by the John M. Bryan Trust. That was part of
8 their liquid assets. That was the economic interest that
9 was being protected by that payment, and the claim in turn
10 was being filed on behalf of the real party in interest who
11 made the payment, if we're going to call them separate
12 legal entities as opposed to just an estate planning
13 device.

14 I don't want to belabor this too much, Your
15 Honor, but the same analysis can be used for the 20 million
16 dollar claim filed in the Legacy case which is Claim 3 and
17 there's another claim -- excuse me, I think I said Claim 3;
18 it's Exhibit 3 -- I believe it's Claim 122. And then
19 there's also this claim for Sycamore Vineyards, which is a
20 longstanding partnership of John and Florence Bryan, which
21 in turn owns I think the growing vines, not the underlying
22 dirt. It's a vineyard company. But it's a partnership,
23 and who owns that partnership? That partnership is
24 owned -- that's one of the assets owned by the John and
25 Florence Bryan Trust. That too is a claim by that entity

1 in this case.

2 These claims -- you know, a claim is an asset;
3 is's an account receivable, and it's one of the assets
4 owned by the John and Florence Bryan Trust. I want to just
5 wrap this up with a little argument. You know, I've
6 recently had the misfortune to have a couple of matters in
7 State Court, and everybody works very hard there but it
8 takes about three years to get a dispute from filing to
9 jury trial in State Court, and a minimum jury trial is
10 three days, on the simplest account receivable claim.

11 If this Court had to have a jury trial for
12 everything it does, there would not be a bankruptcy that
13 took less than 20 years to resolve. And I think both sides
14 agree on the basic premise, which is that if one comes into
15 this court and files a Proof of Claim, he's asked this
16 Court to use its summary equitable powers to award him
17 money from the bankruptcy estate without the long delays
18 and expense of a jury trial.

19 The unbroken line of Supreme Court constitutional
20 authority says that this comes at a cost. If in turn, the
21 estate wants money from that person, that claimant has no
22 right to back out and say, no, no, I really want a jury
23 trial with all of its attendant delays and expense. The
24 claimant has consented to the summary equitable
25 jurisdiction of the court, the same equitable jurisdiction

1 that he sought to take advantage of.

2 I think we've demonstrated that the John and
3 Florence Bryan Trust is actually the claimant in this case
4 as represented by Claims 122, I think it's 145, and 126.
5 They're set forth in the exhibit book. This is the place
6 to try this case. It should be done by the Court, not a
7 jury.

8 THE COURT: I'm assuming that you're asking me to
9 admit 1 through 8 and the deposition transcript as part of
10 the record in this matter?

11 MR. MacCONAGHY: I suppose so, Your Honor. I
12 don't believe that I need to admit Proofs of Claim because
13 they're already in the Court's record, but sure.

14 MR. WESTREICH: Your Honor, we have no objection.
15 I think that Proofs of Claim are already subject to
16 judicial notice and the deposition transcripts that Mr.
17 MacConaghy is relying on having already been submitted.

18 THE COURT: All right. Well, we've still got the
19 trust document, and that's No. 8, right?

20 MR. MacCONAGHY: Yeah.

21 MR. WESTREICH: And that's already in evidence,
22 Your Honor, as an exhibit in connection with the
23 plaintiff's briefs that were filed last week.

24 THE COURT: Okay. Well, unless you have anything
25 you want to add to that, I'll take the matter under

1 submission.

2 MR. WESTREICH: Your Honor, just very briefly.
3 All the points that Mr. MacConaghy just made are
4 interesting, but none are relevant. The only relevant
5 issue is, is a separate and distinct entity under
6 California law entitled as a party to enforce its
7 constitutional jury trial rights, and there's no law that
8 says --

9 THE COURT: No, the issue is, does the waiver of
10 the jury trial right by the person with the power to revoke
11 the trust also waive the jury trial right for the trust?

12 MR. WESTREICH: There is no evidence, nor has any
13 been offered that Mr. Bryan in his capacity as trustee or
14 otherwise acting on behalf of this trust --

15 THE COURT: I didn't say that.

16 MR. WESTREICH: -- waive the jury trial right.
17 If he --

18 THE COURT: The issue is, since he has a right to
19 revoke the trust, is his waiver also effective as to the
20 trust.

21 MR. WESTREICH: I don't think that there's any
22 evidence that -- well, there's certainly no legal authority
23 in support of the notion that the mere right to revoke a
24 trust thereby makes the acts of the settlor or trustee in
25 his individual capacity also the acts of the trust, just as

1 the mere right --

2 THE COURT: Aren't they treated as alter egos
3 under California law?

4 MR. WESTREICH: Well, as we pointed out, alter ego
5 is a theory that provides a remedy to avoid injustice, and
6 as Justice Mosk (Phonetic) pointed out in the Messler
7 (Phonetic) case, even where the alter ego theory is
8 applied, it's only applied for specific purposes as for
9 example, where an entity is used for a fraudulent purpose,
10 the alter ego doctrine will be applied to avoid the fraud.
11 There's no evidence here and I think counsel will stipulate
12 that this trust was set up for purely legitimate reasons,
13 and it was set up many, many years ago.

14 There's no evidence to support the notion that
15 there was any intention to avoid Bankruptcy Court
16 jurisdiction. So we're back to square one. A corporation
17 with a sole shareholder likewise can be dissolved, just
18 like a trust could be revoked, at the election of the
19 shareholder. But that does not mean the corporation has no
20 legal rights.

21 It's precisely the same situation here. And in
22 the absence of any authority that provides that the mere
23 right to revoke somehow turns this into a quasi entity or
24 an entity that's entitled to less than the full panoply of
25 constitutional rights, I think the only correct conclusion

1 is that this trust, as a separate and distinct entity has
2 rights and can enforce them.

3 MR. MacCONAGHY: Submitted.

4 THE COURT: All right.

5 MR. WESTREICH: Thank you, Your Honor.

6 THE COURT: The parties can expect a written
7 decision within ten days.

8 MR. MacCONAGHY: Thank you.

9 MR. WESTREICH: Thank you very much.

10 (Whereupon, the proceedings are concluded at 10:31
11 a.m.)

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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

DATED: October 17, 2007 /s/ Jo McCall

(Exhibit 13)

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Co-Counsel for Plaintiff, The Official Committee
of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)
THE LEGACY ESTATE GROUP, LLC, a)
California limited liability company, formerly)
d/b/a FREEMARK ABBEY WINERY,)
BYRON VINEYARD & WINERY, AND)
ARWOOD VINEYARD & WINERY,)
Debtor.)

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE LEGACY ESTATE
GROUP,

Plaintiff,

v.

JOHN M. BRYAN, JOHN M. AND FLORENCE
E. BRYAN TRUST, J.M. BRYAN FAMILY
TRUST, KULWINDER SIDHU, DEVINDER
SIDHU, PACIFIC PARAGON INVESTMENT
FUND, LTD., a British Columbia company,
HARRY CHEW, and AIC CAPITAL PARTNERS,
LLC, a California limited liability company,

AND RELATED CROSS-ACTION.

Case No. 05-14659 AJ
(Chapter 11)

AP No. 06-1173 AJ

**PLAINTIFF'S LIST OF
EXHIBITS RE EVIDENTIARY
HEARING ON MOTION TO
CERTIFY CASE TO DISTRICT
COURT FOR JURY TRIAL**

Date: 09/27/2007

Time: 10:00 a.m.

Santa Rosa Courtroom—Jaroslovsky

***Official Committee of Unsecured Creditors
of the Legacy Estate Group v.***

John M. Bryan, et al.

AP No. 06-1173

**Table of Contents
Plaintiff's Exhibits
Re
Evidentiary Hearing on Motion
to Certify Case to District Court for Jury Trial**

Date: 09/27/2007

Time: 10:00 a.m.

Santa Rosa Courtroom—Jaroslovsky

<u>Ex.#</u>	<u>Description</u>
1.	Claims Docket Sheet in <i>Legacy Estate Group, LLC</i>
2.	Claims Docket Sheet in <i>Connaught Capital Partners, LLC</i>
3.	Claim No. 122-1 and 122-2 (Legacy) filed by John M. Bryan
4.	Claim No. 4 (Connaught) filed by John M. Bryan
5.	Claim No. 126 (Legacy) filed by John M. Bryan
6.	Claim No. 2 (Connaught) filed by John M. Bryan
7.	Claim No. 145 (Legacy) filed by John M. Bryan on behalf of Sycamore Vineyards
8.	John M. and Florence E. Bryan Amended and Restated Trust Instrument, dated 7/13/2004, with modifications.